

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

**ORDER AND OPINION (1) ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION AND (2) DENYING DEFENDANT'S MOTION TO DISMISS
COUNT V OF THE INDICTMENT**

Defendant has been indicted on various counts of drug and firearm crimes. (Doc. 1.)

Count V charges Defendant with violating 18 U.S.C. § 924(c)(1)(A) by possessing a firearm in furtherance of the drug-related crimes charged in the Indictment. He filed a Motion to Dismiss Count V, (Doc. 41), contending that (1) the firearm was disassembled and therefore did not satisfy the definition of a “firearm” set forth in the statute and (2) because the firearm was inoperable it could not be used “in furtherance of” the drug crimes that have been charged.

The Honorable David P. Rush, Magistrate Judge for this District, held a hearing on June 1, 2016, and he issued a report on August 4, 2016 recommending that the Motion to Dismiss be denied. (Doc. 56.) Defendant has not objected to Judge Rush's Report and Recommendation ("the Report"), and the time for doing so has passed. 28 U.S.C. § 636(b)(1); Local Rule 74.1(a)(2).

A district judge is required to “make a de novo determination of those portions of the [magistrate judge’s] report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). There being no objections, there is no need for an

exhaustive review. The Court agrees with Judge Rush's analysis that the arguments Defendant has raised are factual issues related to the charge, and that it is the jury – not the Court – that must consider his arguments. Accordingly, the Court adopts Judge Rush's Report as the Order of the Court, and the Motion to Dismiss Count V is **DENIED**.

IT IS SO ORDERED.

DATE: August 24, 2016

/s/ Beth Phillips
BETH PHILLIPS, JUDGE
UNITED STATES DISTRICT COURT